

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA,

Plaintiff,

v.

JORGE VASQUEZ-VILLEGAS,

Defendant.

NO. CR-06-6021-EFS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS INDICTMENT**

On August 25, 2006, Defendant Jorge Vasquez-Villegas moved the Court to dismiss the Indictment filed against him on May 23, 2006. (Ct. Rec. 32.) Defendant asserts his underlying deportation did not comport with due process and he suffered prejudice as a result of such defect. (Ct. Rec. 34 at 3.) In its response, the Government does not object to Defendant's motion. (Ct. Rec. 35.) As explained below, the Court grants Defendant's motion.

In the indictment, the Government alleges that on or about April 8, 2006, Defendant was deported and removed from the United States. (Ct. Rec. 1.) Subsequently, the Government alleges that on or about May 15, 2006, Defendant was found in Franklin County, in the Eastern District of Washington. *Id.* Through this motion, Defendant asserts his original deportation proceeding failed to comport with due process. (Ct. Rec. 34.) In a prosecution for reentry by a removed alien, the defendant can

1 succeed if he demonstrates, "(1) his due process rights were violated by
2 defects in his underlying proceeding, and (2) he suffered prejudice as
3 a result of the defects." *United States v. Zarate-Martinez*, 133 F.3d
4 1194, 1197 (9th Cir. 1998).

5 Defendant argues his original deportation proceeding was defective
6 because it was accomplished through a proceeding that did not involve a
7 hearing before an immigration judge (IJ) or the necessary waiver. (Ct.
8 Rec. 34 at 4.) Under the Immigration and Nationality Act, removal
9 proceedings may take place, "(i) in person, (ii) where agreed to by the
10 parties, in the absence of the alien, (iii) through video conference .
11 . . ." 8 U.S.C. § 1229a(b)(2)(A). When a defendant proceeds without
12 counsel and waives his right to a hearing before an IJ, the IJ must
13 determine whether or not the waiver is "voluntary, knowing, and
14 intelligent." 8 C.F.R. § 1003.25(b). "[W]here the record contains an
15 inference that the petitioner is eligible for relief from deportation,
16 'the IJ must advise the alien of this possibility and give him the
17 opportunity to develop the issue.'" *United States v. Arrieta*, 224 F.3d
18 1076, 1079 (9th Cir. 2000) (quoting *Moran-Enriquez v. INS*, 884 F.2d 420,
19 423 (9th Cir. 1989)). Defendant contends there is no evidence the IJ
20 engaged in any fact-finding efforts to determine the validity of
21 Defendant's waiver and that therefore the proceeding was defective. (Ct.
22 Rec. 34 at 7.)

23 Defendant further argues that he was prejudiced by the defect in his
24 hearing. *Id.* at 9. In order to establish prejudice, Defendant must show
25 "that he had a 'plausible' ground for relief from deportation." *Arrieta*,
26 224 F.3d at 1079. An alien may be eligible for fast-track voluntary
departure as long as he is not barred from relief due to terrorism-

1 related activities or an aggravated felony. 8 U.S.C. § 1229c(a). In the
2 instant case, Defendant argues that he would have been a good candidate
3 for fast-track voluntary departure under 8 U.S.C. § 1229c, and thus could
4 have avoided deportation had he been apprised of his rights. (Ct. Rec.
5 34 at 10.)

6 In its response to Defendant's motion to dismiss, the Government
7 acknowledges that it is unable to refute Defendant's allegations and thus
8 does not object to Defendant's motion to dismiss. (Ct. Rec. 35.)
9 Therefore, the Court finds Defendant has demonstrated his due process
10 rights were violated and that he was prejudiced by the violation. As
11 such, the Court hereby grants Defendant's motion to dismiss the
12 Indictment against Mr. Vasquez-Villegas.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 1. Defendant's Motion to Dismiss Indictment (Ct. Rec. 32) is
15 **GRANTED**. The Indictment (Ct. Rec. 1) filed in Case No. CR-06-6021-EFS
16 is **DISMISSED**.

17 2. The pretrial conference set for **September 12, 2006**, and the
18 trial set for **September 18, 2006**, are hereby **STRICKEN**.

19 3. All pending motions are **DENIED AS MOOT**.

20 **IT IS SO ORDERED**. The District Court Executive is directed to enter
21 this Order and provide a copy to counsel, the U.S. Marshal, the U.S.
22 Probation Officer, and the Jury Administrator.

23 **DATED** this 1st day of September 2006.

24
25 S/ Edward F. Shea
26 EDWARD F. SHEA
United States District Judge